IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

Crl.Rev.Pet.No. 855 of 1999()

CRA.234/1998 of V ADDL.SESSIONS COURT, ERNAKULAM DT.1.7.1999
CC.524/1996 of JUDL.MAGISTRATE OF FIRST CLASS-II, MUVATTUPUZHA

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REVN. PETITIONER: APPELLANT/ ACCUSED

V.U.VARKEY,
VADAKKEDATHU, MANAKADU P.O.,
THODUPUZHA.

BY ADV. SRI.S.K.MURALEEDHARA KAIMAL

RESPONDENTS: COMPLAINANT (NO.2).
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1. **STATE OF KERALA,**
   REP.BY THE PUBLIC
   PROSECUTOR, HIGH COURT OF
   KERALA, ERNAKULAM.

2. **AJITH KUMAR,**
   VADAKKUMPARAMBIL, MARUTHOOR,
   KALLORKKADU P.O., MUVATTUPUZHA.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI
SRI.T.I.DANIEL
SMT.V.O.PHILOMINA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.855 of 1999

DATED THIS THE 14th June 2007

ORDER

The revision petitioner stands convicted for the offnece under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.25,000/- and in default to suffer rigorous imprisonment for three months. The case of the complainant is that the accused borrowed a sum of Rs.50,000/- and towards discharge of the same he issued Exct.P1 cheque which when presented for encashment got bounced for want of funds in the account of the accused. Lawyer notice was received and no reply wans sent.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 3 and Exts.P1 to P7. No defence witness was examined. PW1 is the complainant . The execution of the cheque is proved by the evidence of PW1. Pws.2 and 3 are the Bank Managers who have testified with respect to the receipt of the cheque and dishonour of the cheque and has also produced

Ext.P7 abstract of the ledger folio of the account of the accused which stands proved by PW.3. Counsel for the revision petitioner has relied on certain alleged discrepancies brought out in the cross examination of PW1. It is pointed out that the accused is not known of the complainant and that it is unlikely that a person not acquainted with the borrower would have lend the money to him. I find that the above contention was considered by the courts below. It is seen that the complainant has mentioned that alias name of the accused which is also mentioned in the complaint. Further more it is pointed out that the accused had no transaction with the complainant and that the cheque was given to one Babu and the above Babu perhaps handed over the cheque to the complainant and got filed the complaint. I find that no evidence in this regard has been adduced. The conduct of the revision petitioner in not taking any steps to get back the cheque from the above said Babu has not been explained.

In the circumstances, I find no reason to interfere in the findings of the courts below. The conviction is confirmed. All the

same, considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.50,000/- less the amount, if any deposited, and in default to undergo simple imprisonment for three months. The revision petitioner is granted three months time to pay the amount of compensation. He shall appear before the Judicial First Class Magistrate-II, Muvattupuzha on 14-9-2007 to receive sentence. The Crl.revision petition is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

ks.

ORDER ON CRL..M.P.NO. 3917 OF 1999 IN CRL.R.P.NO. 855 OF 1999

DISMISSED.

14-6-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.NO.855 of 1999-B

ORDER

14-6-2007